

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1575 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

KISHOR TRADERS  
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Appearance:

Mr.V.M. Pancholi, AGP, for Petitioner  
MR SK JHAVERI for Respondent No. 1  
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CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 21/07/2000

ORAL JUDGEMENT

1. Appellant, State of Gujarat, has filed this appeal under Section 96 of the Code of Civil Procedure, challenging judgment and decree dated December 31, 1979, passed by learned Joint Civil Judge (S.D.), Mehsana, in

Civil Suit No.20 of 1977, by which judgment and decree, it was ordered that the respondent was entitled to recover Rs.21054/- with running interest at the 6% per annum on Rs.16404.44 ps from the date of the suit till realisation.

2. The respondent is a partnership firm registered under the Indian Partnership Act. The Executive Engineer, Public Health Works Department of Ahmedabad, invited tenders for supply of mild-steel round bars for construction work of government buildings. The respondent had submitted his tender which was accepted and approved by the Executive Engineer of Public Health Works Department. The respondent paid amount of security deposit as per the terms of the tender agreement. It is the case of the respondent that he had supplied mild-steel bars of value of Rs.1,38,869.94 ps whereas the Department had only paid Rs.1,21,465.50 ps, and, thus, Rs.16,404, 44 ps were found due from the appellant on Kartik sud 1 of S.Y. 2032. It is the case of the respondent that, as per the terms of the agreement, the appellant was bound to pay amount of bills within one month of issuance of bill, failing which, the appellant was bound to pay interest at the rate of 12% per annum. As per the case of the respondent, in spite of repeated demands, the appellant had not paid Rs.16,404.44 ps. Hence, after serving notice under Section 80 of the Code of Civil Procedure, Civil Suit No.20 of 1977 was filed against the appellant claiming principal amount and interest and costs of the suit.

3. The suit was resisted by the appellant by filing written statement at Exh.12, inter alia, denying all the allegations and averments made in the plaint. It was averred that mild-steel bars supplied by the respondent were of shorter length and the respondent had not supplied balance quantity of about 3 MT. It was further averred that the respondent had not produced test report of mild-steel bars supplied by him, as a result of which, the Deputy Engineer had to incur expenses of Rs.147.30 ps for test report of said mild-steel bars supplied by the respondent. With regard to claim of interest, it was averred that, as delay had occurred on account of fault on the part of the respondent, since no test certificate along with delivery of material was produced, the respondent was not entitled to claim interest. It was averred that delivery of 3 MT of mild-steel bars was not accepted by the Deputy Engineer as the length of mild-steel bars was short and, hence, the amount was not paid for 3 MT of mild-steel bars which was rejected by the appellant. It was further averred that the

respondent was entitled to price of acceptable 36,875 MT of mild-steel bars at Ahmedabad office at the rate of Rs.2700/- per MT. It was admitted that only amount of Rs.2659.88 ps was due to be paid to the respondent for the goods supplied to Ahmedabad office. With regard to delivery of materials to be supplied at Tharad, it was averred that the respondent had supplied 9.968 MT of mild-steel bars to Deputy Engineer, P.H. Sani, Sub Division, Tharad and against that supply the respondent was paid 95% of the total amount of the goods.

4. On rival assertions of the parties, the trial court framed issues at Exh.18. The respondent, to prove its case, examined Rameshbhai Shivilal Shah at Exh.58, who was partner of the respondent-firm, Shankerbhai Senthabhai Patel, who was serving as Assistant Professor in Applied Mechanics Department of L.D. Engineering College, at Exh.72, Chelabhai Purshottamdas Patel, who was serving in the respondent-firm, at Exh.79, Baghubhai Jivabhai Patel, partner of Deep Iron Stores, at Exh.81. On behalf of the appellant, Yusuf Gulam Shaikh, who was serving in the Public Health Center, Sub Division II, Ahmedabad, was examined at Exh.84 and Bhogilal Desaiabhai Patel, who was at the relevant time serving as Deputy Engineer in Public Health Sanitary Sub-Division, Ahmedabad, was examined at Exh.85. The parties had also produced relevant documentary evidence, reference to which will be made as and when required during the course of the judgment.

5. The trial court, on appreciation of evidence led by the parties, deduced that the respondent had proved that amount of Rs.16404.44 ps remained due from the appellant for the goods supplied. The trial court further deduced that the respondent was entitled to interest of Rs.4776.15 ps. The trial court further deduced that the respondent had not produced test certificate along with the goods supplied, as a result of which, the appellant had to get the goods certified and, as a consequence of which, had incurred expense of Rs.147.30 ps which was to be recovered from the respondent. On the abovereferred to reasons, the trial court passed decree against the appellant for Rs.21,054/- with running interest at the rate of 6% per annum on Rs.16404.44 ps from the date of the suit till realisation, which has given rise to filing of this appeal.

6. Learned counsel for the appellant and learned counsel for the respondent have taken me through the entire evidence produced on record in the trial court.

Learned Assistant Government Pleader, Mr. V.M. Pancholi, appearing for the appellant, has vehemently submitted that mild-steel bars supplied by the appellant were not having proper length as prescribed under the tender agreement and, therefore, the appellant had rightly not accepted M.S. Bars weighing 3 MT. Learned AGP further submitted that the amount of interest awarded by the trial court was erroneous as the respondent had not given the final bill and, hence, he was not entitled to claim interest. Learned counsel for the appellant further submitted that the respondent had not acted as per the terms of the agreement and had not supplied MS bars as per specification as contained in tender agreement Exh.57.

7. Learned counsel for the respondent, Mr. S.K. Zaveri, has submitted that the respondent had supplied required quantity of mild-steel bars within the time stipulated in the tender agreement and, therefore, the trial court was justified in passing the decree for Rs.21,054/- with interest at the rate of 6% on Rs.16,404.44 from the date of the suit till realisation. Learned counsel for the respondent has submitted that the evidence led by the appellant did not prove that mild-steel bars supplied by the respondent were of shorter length. Learned counsel for the respondent further submitted that the respondent had supplied required quantity of mild-steel bars within three months, as admitted by witness Mr. B.D. Patel examined at Exh.85. Learned counsel for the respondent submitted that no error is committed by the trial court in passing the decree in favour of the respondent and, therefore, the appeal be dismissed with costs.

8. Oral as well as documentary evidence produced by the respondent proves that the respondent had not committed any breach in supplying the required quantity of mild-steel bars as per the tender agreement Exh.57. The evidence of witness Mr. B.D. Patel, who was at the relevant time serving as Deputy Engineer in Public Health Department, indicates that the Department had not kept any evidence to show that the respondent had supplied mild-steel bars of shorter length. The witness had admitted in his evidence that the Department had only weighed mild-steel bars and length of the said mild-steel bars was not measured. He, in terms, admitted that, in the present case, length of mild-steel bars was not measured. In cross examination, in paragraph 19, he admitted that he had no evidence with him showing that mild-steel bars supplied by the respondent were of shorter length. The admission made by witness Mr. B.D.

Patel clearly shows that the appellant had failed to prove that mild-steel bars supplied by the respondent were of shorter length and quantity of mild-steel bars of shorter length was 3 MT, which was not accepted by the Department. In absence of any evidence produced by the appellant, the trial court was justified in holding that the appellant had not produced any evidence in support of their case that mild-steel bars supplied by the respondent was of shorter length. The evidence produced on record of the case clearly proved that the respondent had supplied required quantity of mild-steel bars within the stipulated period as agreed under tender agreement Exh.57, which is also admitted by witness Mr. B.D. Patel who was examined by the appellant.

9. The submission of the learned counsel for the appellant that the trial court had erred in awarding interest in absence of any term in the tender agreement Exh.57 also deserves to be rejected. The respondent had supplied required quantity of mild-steel bars before stipulated period of three months, as admitted by the witness of the appellant. The appellant, on supply of full quantity of mild-steel bars, was liable to pay due amount as per the final bill. A lame excuse was made by the appellant in their written statement that final bill was duly prepared but the respondent had not come to sign it. However, it is stated that Mr. B.D. Patel, Exh.85, in paragraph 20 of his deposition, admitted that the respondent was never informed by letter that he should come and sign the final bill. In my opinion, just to avoid liability to pay interest, a lame and false excuse has been made by the appellant that the final bill could not be submitted as the respondent did not come to sign it. On the contrary, the evidence of the respondent clearly indicates that, even though several requests were made to pay up the remaining dues, the appellant had not paid any heed to the requests made by the respondents. In my view, as amount due was not paid by the appellant and there was no justification to retain that amount, the respondent was entitled to claim interest as per the provision of Section 61 of the Sales of Goods Act and the trial court had committed no error in awarding interest on the amount due. Taking into consideration over all view of the matter and the evidence led by the parties, in my view, there is no infirmity found in the judgment and decree passed by the learned trial judge. Learned counsel for the appellant has not been able to dislodge the reasonings and conclusion arrived at by the learned trial judge. The judgment and decree of the trial court is based on proper appreciation of oral as well as documentary evidence and I find no reason to interfere

with those reasonings. These were the only contentions advanced by the learned counsel for the parties.

10. As a result of foregoing discussion, I find no merit in this appeal and it is hereby dismissed. The judgment and decree dated December 31, 1979, passed by learned Joint Civil Judge (S.D.), Mehsana, in Civil Suit No.20 of 1977, is confirmed. There shall be no order as to costs.

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(swamy)